

In order to document the fact that sales to purchasers are sales for resale, sellers are obligated to obtain valid Certificates of Resale from purchasers. See 86 Ill. Adm. Code 130.1405. (This is a GIL).

March 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 29, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Your office was contacted in 1990, 1992, 1994, 1996 and 1998 to assist the COMPANY in its publication of the SURVEY. Forty-five states and the District of Columbia were each asked to respond to the 10 survey questions relating to third-party drop shipment transactions. All jurisdictions responded, and the results were compiled and published in 1990, 1992, 1994, 1996 and 1998. Your office was sent a copy of each of the publications. An additional 1998 copy is enclosed for your reference.

We have had continuing favorable reaction to this publication, so much so that the COMPANY is going to completely reprint the survey for 2000 which will be the Fifth Edition. Over 1,000 copies of the 1998 survey were ordered by the majority of the Fortune 1000 corporations and the reaction to this monographic study has been overwhelmingly favorable with many requests for a complete update that would reflect statute and administrative changes in the various states since the Fourth Edition was released in July 1998.

Therefore, we are contacting all of the 46 taxing jurisdictions that responded in 1998 to the questionnaire that appears on pages ii-iii of the 1998 SURVEY and are asking each of them to review their responses related thereto and to respond anew to each of the 10 questions. Of course, if there are no changes, simply advise accordingly.

We would be most appreciative if you would take the time to respond to the ten questions and furnish any updated respondent address information that is appropriate. When all of the states and the District of Columbia have replied, the information will be republished in a new booklet and you will be sent, of course, a copy. Please direct your replies to my attention at the following address where the compilation will take place:

...

A reply by you no later than May 1, 2000, would be most gracious on your part given the time schedule we have allowed for information gathering and printing of this new 2000 survey. If you have any questions, do give me a call. My direct dial number is: #####.

In regards to drop shipment situations, Illinois law has not changed since 1998. However, I do want to clarify the documentation requirements that the Department requires for a valid Certificate of Resale. In order to document the fact that their sales to Purchasers are sales for resale, Seller Companies are obligated by Illinois to obtain valid Certificates of Resale from Purchasers. See the enclosed copy of 86 Ill. Adm. Code 130.1405. Certificates of Resale must contain the following items of information.

1. A statement from the purchaser that items are being purchased for resale;
2. Seller's name and address;
3. Purchaser's name and address;
4. A description of the items being purchased for resale;
5. Purchaser's signature and date of signing;
6. Purchaser's registration number with the Illinois Department of Revenue; purchaser's resale number issued by the Illinois Department of Revenue; or, a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

If Purchasers have no nexus with Illinois, it is unlikely that Purchasers would be registered with Illinois. If that is the case, and if Purchasers have no contact with Illinois which would require them to be registered as out-of-State Use Tax collectors for Illinois, then Purchasers could obtain resale numbers which would provide them the wherewithal to supply required numbers to Companies in conjunction with Certificates of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Purchasers do not act as Illinois retailers and, so long as they do not fall under the definition of a "retailer maintaining a place of business in this State", their sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and they cannot be required to act as Use Tax collectors. So long as this is true, Purchasers qualify for resale numbers that do not require the filing of tax returns with the Illinois Department of Revenue. See 86 Ill. Adm. Code 130.1415.

Please note that the fact that Purchasers may not be required to act as Use Tax collectors for Illinois does not relieve their Customers of Use Tax liability. Therefore, if Purchasers do not collect Illinois Use Tax from their Customers, the Customers would have to pay their tax liability directly to the Illinois Department of Revenue.

While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act provides as follows:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." 35 ILCS 120/2c.

Again, including registration or resale numbers from Purchasers on Certificates of Resale is the preferred method for documenting that their purchases from Companies are purchases for resale. However, in light of this statutory language, certifications from Purchasers on Certificates of Resale in lieu of resale numbers which described the drop-shipment situation and the fact that Purchasers have no contact with Illinois which would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by Companies in accepting such a certification and the risk run by Purchasers in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Companies as evidence that the particular sale was, in fact, a sale for resale.

An important point to note is that the preferred method of documentation is a Certificate of Resale containing either a registration number or a resale number. The Department is more likely to scrutinize any other evidence provided that does not contain these numbers. Further, while the other evidence does not contain the resale or registration number of the purchaser, it must contain the other information required for a certificate of resale or it may not be accepted.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.